

### **Remarks**

While applicants respectfully submit the finality of the previous rejections was premature, nevertheless, reconsideration of the instant application is respectfully requested in light of the above-amendments and following remarks.

#### **I. STATUS OF THE CLAIMS**

Claims 1-4, 9, 11-14, and 16-19 are now pending. Claim 1 has been amended to incorporate the limitations of previous claims 7 and 10. Claims 5-7, and 15 have been canceled in this amendment without prejudice. No new matter has been added.

#### **II. THE CLAIMED INVENTION IS PATENTABLE OVER SHANA'A**

The Examiner rejected the pending claims under 35 U.S.C. 103(a) as being obvious in view of U.S. Patent No. 6,737,394<sup>1</sup> issued to Shana'a (hereinafter "Shana'a"). More specifically, the Examiner asserted that Shana'a discloses isotropic cleansing compositions comprising surfactants and a thickening agent, including hydrophobically modified, crosslinked, polyacrylates. The Examiner acknowledged that Shana'a does not require the specific amounts of surfactants (particularly the amphoteric surfactant) "with sufficient specificity to constitute anticipation." Nevertheless, the Examiner concluded that "[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated [a composition of the claimed invention] . . . because such compositions fall within the scope of those taught by Shana'a et al."

In reply, applicants respectfully submit that the claimed invention is patentable over Shana'a. In particular, applicants note that not only does Shana'a fail to provide the requisite motivation to combine the teachings thereof to achieve the any particular compound having the recited combinations of anionic surfactant, hydrophobically-modified polymer, and amphoteric surfactant in the recited amounts as now claimed, but *moreover*, Shana'a fails to teach or suggest

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<sup>1</sup> Applicants respectfully do not necessarily agree that this reference is properly cited as prior art and hereby reserve the right to swear behind such reference.

the *unexpected results* discovered by applicants to be associated with the claimed compositions having the recited combinations of anionic surfactant, hydrophobically-modified polymer, and amphoteric surfactants in the recited amounts. In light of such unexpected results and other arguments, the claimed invention is patentable over Shana'a.

As illustrated in the Examples of the instant specification, applicants have discovered unexpectedly that compositions having the specific combination of surfactants and hydrophobically-modified polymers as now claimed exhibit unexpectedly low irritation properties as compared to a variety of comparable compositions having surfactants, surfactant amounts, polymers, and/or polymer amounts *outside* of the claimed compositions (though still potentially *within* the scope of the Shana'a disclosure). In particular, as shown in Tables 3 and 4, and described in the surrounding text of the Examples, applicants have discovered that the claimed compositions exhibit a TEP value (related to irritation, wherein higher TEP value is lower irritation (see specification, pages 25-26)), that tends to be at least about 1.8 to over 2 times higher than the TEP values of comparable compositions. For example, reference is made to the TEP of Examples 6-10 as compared to comparative Example 5.

In addition, reference is made to Tables 5 and 6, wherein applicants have illustrated the unexpected Ocular sting results associated with the compositions of the claimed invention. Applicants have discovered that compositions having the particular ratio of anionic to amphoteric surfactants as now required have significant and unexpectedly lower ocular sting associated therewith as compared to comparable compositions (compare Example 13 (within the claimed invention) with Example 12).

There is no teaching or suggestion in Shana'a that any particular composition specifically comprising anionic surfactants, amphoteric surfactants, and the claimed hydrophobically-modified polymers combined in the required amounts and ratios are capable of producing compositions having unexpectedly low irritation, and particularly, low ocular sting, associated therewith. Rather, the broad teaching of Shana'a suggests that a variety of compositions comprising combinations of surfactants and polymers *outside* of the claimed ranges are acceptable and equally suitable for use as those presently claimed. Accordingly, one of skill in the art would not be motivated, nor provided any suggestion, to achieve an article of the claimed

invention comprising the specifically recited surfactants and polymers in the recited amounts and having the unexpected properties discovered by applicants to be associated therewith in light of the teachings Shana'a and otherwise in the art. The claimed invention is therefore patentable over the Examiner's rejection and should be allowed.

### **III. THE PROVISIONAL DOUBLE PATENTING REJECTIONS ARE RENDERED MOOT**

The Examiner with drew the provisional double patenting rejection over Appl. No. 10/650,398, but maintained the provisional rejections of all pending claims under the doctrine of obviousness-type double patenting in view of: the claims of copending Application No. 10/650,226; and the claims of copending Application No. 10/650,495.

While applicants do not necessarily agree with the Examiner's rejections in any regard, nevertheless, because such provisional rejections are the only rejections remaining in view of the amendments and remarks herein, and to applicants knowledge, no patent has issued based on the above-cited applications, applicants submit such rejections should be withdrawn pursuant to MPEP 804(I)(B), and the instant case allowed. Should any of the above applications issue into a patent prior to allowance of the instant application, the Examiner is requested to contact the undersigned to allow applicants to consider filing a Terminal Disclaimer, or otherwise overcome any resulting non-provisional double patenting rejection.

#### **IV. CONCLUSION**

In light of the above amendments and remarks, applicants respectfully submit the application is in condition for allowance and requests an early notice of allowance for this application. Should the Examiner have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

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